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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,759	06/21/2006	Sobhi Sauob	32102	8697

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Martin D Moynihan
Prtsi Inc
PO Box 16446
Arlington, VA 22215

EXAMINER	
MI, QIUWEN	
ART UNIT	PAPER NUMBER
1655	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/583,759	SAUOB ET AL.	
	Examiner	Art Unit	
	QIUWEN MI	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 March 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *103-183* is/are pending in the application.

4a) Of the above claim(s) *103-114,126-128,130-140,145-147 and 150-183* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *115-125,129,141-144,148 and 149* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 June 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *6/21/06; 11/29/07*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election of Group III, claims 115-129, 141-149, in the reply filed on 3/12/08 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims Pending

Claims 1-102 are cancelled. Claims 103-183 are pending. Claims 103-114, 126-128, 130-140, 145-147, and 150-183 are withdrawn as they are directed toward a non-elected invention groups or species. Claims 115-125, 129, 141-144, 148, and 149 are examined on the merits.

Specification/Abstract Objections

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In the instant case, Applicant is required to connect "anti" with "hyperglycemic" with hyphen (anti-hyperglycemic) in lines 1 and 2.

Claim Objections

Claims 115, 117, 118, 119, 129, 141, and 148 are objected to because of the following informalities: Claims 115, 117, 118, 119, 129, 141, and 148 recite "Portulaca oleracea", which is incorrect, as the latin name of the plant should be italicized. Appropriate correction is required.

Claim Rejections –35 USC § 112, 2nd

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 119-125, 129, 141-144, 148, and 149 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 119, 120, 129, 141-144, 148, and 149 recite "polar **fraction extract**", and it is not clear exactly what Applicant is referring to by "**fraction extract**", as it can only be either a fraction or an extract, but can't be both a fraction and an extract. Therefore, the metes and bounds of claims are rendered vague and indefinite, the lack of clarity renders the claims very confusing and ambiguous since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

All other cited claims depend directly or indirectly from rejected claims and are, therefore, also, rejected under U.S.C. 112, second paragraph for the reasons set forth above.

Claim Rejections –35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 119-125, 141-144, and 149 are rejected under 35 USC § 102 (b) as being anticipated by Bae et al (KR 2001004857 A), as evidenced by Kin et al (JP 63208531 A).

Bae et al teach that *Portulaca oleracea* extract is provided for manufacturing a functional drink. *Portulaca oleracea* is heated with hot water (a pharmaceutical acceptable carrier) (thus a polar fraction extract) or dissolved with ethanol solvent (a pharmaceutical acceptable carrier) (thus a polar fraction extract), then compressed or filtered to make extract. The extract is processed to a liquid or powder phase (see Abstract, full translation has been ordered).

As evidenced by Kin et al, water extract of *Portulaca oleracea* is effective against diabetics, and lowers blood sugar value of the diabetics (see Abstract, full translation has been ordered).

It is noted that Bae et al do not teach hydrocolloids, thus the limitations of claims 120 and 149 are met.

The intended use of the composition was analyzed for patentable weight. It is deemed that the preamble 'breathes life' into the claims in that the prior art product must not be

precluded for use to lower glucose levels in the blood or increase glucose transport into cells and/or decrease glucose adsorption through the intestines. It is deemed that the composition disclosed by the cited reference is not precluded for carrying out the intended function of the claims.

Since the prior art teaches the same plant material *Portulaca oleracea* and the same polar fraction extract as claimed, it is deemed that fraction/extract in the prior art contains the same chemical components that has the same Rf values in TLC as claimed.

Therefore, the reference is deemed to anticipate the instant claim above.

Claim Rejections –35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 115-125, 129, 141-144, 148, and 149 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bae et al (KR 2001004857 A), as evidenced by Kin et al (JP 63208531 A).

Bae et al teach that *Portulaca oleracea* extract is provided for manufacturing a functional drink. *Portulaca oleracea* is heated with hot water (a pharmaceutical acceptable carrier) (thus a polar fraction extract) or dissolved with ethanol solvent (a pharmaceutical acceptable carrier)

(thus a polar fraction extract), then compressed or filtered to make extract. The extract is processed to a liquid or powder phase (see Abstract, full translation has been ordered).

As evidenced by Kin et al, water extract of *Portulaca oleracea* is effective against diabetics, and lowers blood sugar value of the diabetics (see Abstract, full translation has been ordered).

It is noted that Bae et al do not teach hydrocolloids, thus the limitations of claims 120 and 149 are met.

The intended use of the composition was analyzed for patentable weight. It is deemed that the preamble 'breathes life' into the claims in that the prior art product must not be precluded for use to lower glucose levels in the blood or increase glucose transport into cells and/or decrease glucose adsorption through the intestines. It is deemed that the composition disclosed by the cited reference is not precluded for carrying out the intended function of the claims.

Since the prior art teaches the same plant material *Portulaca oleracea* and the same polar fraction extract as claimed, it is deemed that fraction/extract in the prior art contains the same chemical components that has the same Rf values in TLC as claimed.

Bae et al do not teach an ethanol-water extract with the claimed ratio, or a solvent of methanol: ethanol: water in proportions of 1:1:1.

It would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use the ethanol-water extract since Bae et al teach extracting *Portulaca*

oleracea with water and ethanol, and since ethanol and water are often used in a mixture as a conventional solvent in the art. It would have been *prima facie* obvious for one of ordinary skill in the art to add methanol into the mixture of ethanol and water, as methanol and ethanol are used interchangeably in the art since they have similar polarities, and adding methanol to the mixture reduces the boiling temperature of the mixture solvent so that the heat-labile components would not be altered. Regarding the limitation to the claimed ratio of ethanol-water, or the ratio of methanol: ethanol : water, the result-effective adjustment in conventional working parameters is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan, which is dependent on polarity and stability of the active components in the plant.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qiuwen Mi whose telephone number is 571-272-5984. The examiner can normally be reached on 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Qiuwen Mi

/Terry A. McKelvey/
Supervisory Patent Examiner, Art Unit 1655